

In re) Fair Hearing No. 10,953
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

The petitioner is a forty-seven-year-old woman with a high school education. She has worked as a waitress and as a laborer in a factory. She has not worked since 1986, when she developed back pain that made her unable to perform heavy labor.

An M.R.I. test taken in August, 1990, revealed "degenerative changes and marginal osteophytic formation at the mid and lower cervical spine" and a "post operative fusion of C3-C4 vertebral bodies".

Patient has had mostly neck symptomatology and currently in vocational rehabilitation. Patient says that during her walking, her legs give out but otherwise her back is less symptomatic in the neck. Patient has

been not doing a lot of her exercises and certainly says that she just can't tolerate it. Patient continues to have poor posture. Patient states that both her arms feels heavy, right worse than left. Patient is currently several years status post surgery, C3-4 level by [surgeon]. Patient said that [surgeon] did not feel that "he could do anything for her and to go to a [city] clinic". No explanation was given to the patient concerning this. Patient had repeat x-rays which have not been done in recent times and good fusion of C3-4 was noted however, significant changes and on including major osteophyte formation at C6-7 and C5-6 with what looks like a C4-5 osteophyte which is probably from stripping of the anterior longitudinal ligament from the original surgery. Concerning patient's significant degenerative changes in the neck region, there is significant possibility that the patient has degenerative disc changes that can be accountable for some of her persisted neck pain which has been debilitating. Feel that a cervical spine discogram could possibility identify a pain source for these problems and patient will return in 6 weeks for follow-up and will have the patient's case discussed with [neurologist] concerning his feelings about efficacy of such a procedure.

The neurologist referred to in the above report had noted in September, 1991, office notes that the petitioner, "initially after improving with physical therapy over the past three weeks has had recurrence of pain on the left posterior shoulder with numbness down her arm and pain down the left hip and leg similar to December 1988". His "impression" of the petitioner's problem at that time was "increased musculoskeletal nerve root pain from myofascial syndrome". Medication and physical therapy were recommended. In an October office note, however, essentially the same symptoms are reported. And, in an office note dated November 7, 1991 (the most recent in the case record), the neurologist noted that the petitioner "has

not been improved with physical therapy with massage and ultrasound to the neck and upper trapezius". Finally, in a statement dated December 18, 1991, the neurologist stated:

[Petitioner] is under my medical care. She is temporarily totally disabled and will not be able to return to work for one year.

The petitioner alleges that she can stand for only fifteen minutes and sit for only twenty minutes without pain. She also states her hands begin to cramp up after a few minutes of manual activity (such as writing). The petitioner's allegations are fully consistent with the medical evidence, and the opinion of her treating physician that she is "totally disabled" is uncontroverted. Based on the medical evidence it is found that the petitioner has been unable to perform any substantial gainful activity at least as of September, 1991, and that her total disability will last at least twelve consecutive months.

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual

functional capacity, age, education, and work experience is considered.

As noted above, uncontroverted medical evidence establishes that the petitioner, at least as of September, 1991, has fully met the above definition. Therefore, the Department's decision is reversed.

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